SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY
WRIT APPEAL No. 984 OF 2006

BETWEEN
Mallela Ravi Kumar

.....Appellant

And
The State Election Commissioner,
Buddha Bhavan, Secunderabad & others

.....Respondents

Counsel for the appellant : Shri O. Manohar Reddy

Dated: 27.09.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 08.08.2006 passed by the learned Single Judge in Writ Petition No.17160 of 2006 whereby he declined to entertain the appellant's prayer for invalidation of the election of respondent No.4 – Jogi Sajjan Rao as Sarpanch of Perlipadu Gram Panchayat, Karlapalem Mandal, Guntur District.

The Facts:

In the election held on 6.8.2006, respondent No.4 was declared elected as Sarpanch of the Gram Panchayat. The appellant challenged the result of the election by alleging that respondent No.4 does not belong to Scheduled Caste and, as such, he was not eligible to contest for the post of Sarpanch, which was earmarked for Scheduled Castes. He further alleged that respondent No.4 is guilty of practicing fraud on the electorate inasmuch as he had contested two previous elections by projecting himself as a member of Backward Class (1995 elections) and as a member of un-reserved category (2001 elections) and now he got himself elected by claiming to be a member of Scheduled Caste.

The learned Single Judge noted the contention of the petitioner, referred to the judgment of the Supreme Court in **K. Venkatachalam v. A. Swamickan and another**[1], but declined to entertain the writ petition by recording the following observations:

> ".....This court does have the jurisdiction to adjudicate upon the issue whether an election was held in clear transgression of the mandate of the law. In appropriate and extreme cases the court may also interfere where the transgression is so grave or the consequence of the transgression so detrimental to public interest, as to warrant and justify the exercise of its discretion

to interdict the violation. Normally, however, as there is a duly constituted Tribunal of wider jurisdiction available to adjudicate upon disputes pertaining to elections, this court declines to exercise its extraordinary but discretionary jurisdiction u/Art.226. This course is not an abdication of its constitutional role, but for efficient management of the court's business and distribution of its adjudicative burdens. This court is ever conscious that it has a heavy docket burden to bear and circumspection must be exercised to canalize cases coming before it to duly constituted adjudicatory Tribunals so that the portals of this court are not clogged to hinder consideration of important issues involving life, liberty and property of citizens against transgression by the State, for those critical cases must receive the vital attention of this institution. Regular disputes including those involving elections could well and profitably be relegated to be adjudicated before the statutory Tribunals as these have exclusive jurisdiction to deal with such disputes.

In the case on hand, the petitioner had withdrawn from the race. It is also not his case that he has objected to the contest by the 4th respondent on the ground of 4th respondent's disqualification. The pleadings are vaguely asserted that an objection has been asserted to the disqualification of the 4th respondent. The inference is compelling that the objection to the 4th respondent's qualification has been asserted by some other candidate or person, other than the petitioner."

Shri O. Manohar Reddy, learned counsel for the appellant argued that the refusal of the learned Single Judge to entertain the writ petition should be construed as failure to exercise the power vested in this Court under Article 226 of the Constitution and the order under challenge should be set aside in view of the judgment of the Supreme Court in **K. Venkatachalam v. A. Swamickan and another** (supra). Shri Reddy emphasized that respondent No.4 is guilty of practicing fraud and, therefore, it is a fit case for exercise of power under Article 226 of the Constitution for invalidation of the impugned election.

In our opinion, the view expressed by the learned Single Judge on the issue of availability of alternative remedy to the appellant is in consonance with the declaration of law repeatedly made by the Supreme Court and there is no valid ground or justification to interfere with the discretion exercised by the learned Single Judge not to entertain the writ petition filed by the appellant. We, however, deem it proper to clarify that the observations made by the learned Single Judge on the High Court's power to entertain the writ petition must be read in the context of the judgment of the Supreme Court in **Election Commission of India v. Ashok Kumar**[2] and **State of U.P. v. Pradhan Sangh Kshetra Samiti**[3]**.**

In Writ Petition No.14068 of 2006 - **Eppala China Venkateswarlu and others v. Secretary to Government, Social Welfare (F) Department, Government of Andhra Pradesh and others** decided on 3.8.006, this Court analysed the provisions of Articles 243-O and 329 of the Constitution, Andhra Pradesh Panchayat Raj Act, 1994 and the rules framed thereunder, and laid down the following propositions:

1) The word "election" appearing in Article 243-O and the provisions contained in the 1994 Act and the rules framed thereunder bears larger connotation. It embraces and includes all steps commencing from the date of notification by the competent authority, whereby the electorates are called upon to elect Sarpanchas and Ward Members and ending with declaration of result. Reservation of offices of Sarpanch and Wards in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women, preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny of nomination papers and withdrawal thereof, publication of the list of eligible candidates, allotment of symbols, appointment of election agents, the conduct of poll, counting of votes, declaration of results and all other ancillary steps taken for the purpose of holding elections fall within the ambit of the term "election". {**N.P. Ponnuswami v.**

Returning Officer, Namakkal Constituency[4], **Mohinder Singh Gill v. Chief Election Commissioner**[5], **Election Commission of India v. Shivaji**[6] and **Election Commission of India v. Ashok Kumar** (supra)}**.**

2) i) The bar contained in Article 243-O, which begins with non-obstante clause, debars all Courts from entertaining any challenge to law relating to delimitation of constituencies or allotment of seat made or purporting to be made under Article 243-K or election to the Panchayats. This bar also operates against the High Court's power of judicial review under Article 226. {**N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Durga Shankar Mehta v. Raghuraj Singh**[7], **Election Commission of India v. Shivaji** and **Election Commission of India v. Ashok Kumar** (supra)}.

ii) The proposition contained in clause (i) above is subject to the condition that challenge to the delimitation may be entertained in exceptional cases where no objections were invited and no hearing was given provided that such challenge is made before issue of notification for holding election. {**State of U.P. v. Pradhan Sangh Kshetra Samiti** (supra)}**.**

iii) The bar contained in Article 243-O (b) operates only till the adjudication of election dispute by an adjudicatory forum created by or under any law made by the Legislature of the State. An order made by an adjudicatory forum constituted under the law made by the State Legislature can be called in question by filing a petition under Article 226 of the Constitution.

3) The bar contained in Article 243-O operates at all stages of the election i.e. notification issued by the State Election Commission calling upon the electorate to elect Sarpanches and Ward Members; reservation of offices of Sarpanches in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women; preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny and withdrawal thereof; allotment of symbols; appointment of election agents; counting of votes and declaration of result.

4) The bar contained in Article 243-O (b) does not operate qua challenge to the constitutionality of a statutory provision relating to elections, though, even in such a case, the High Court will be extremely loath to pass an interlocutory order which has the effect of stalling or jeopardizing the process of election or which may result in the constitutional hiatus on account of indirect violation of Article 243-K (3) read with Article 243-K (1).

5) The observations made in **Harnek Singh v. Charanjit Singh**[8] have to be read in the light of the law laid down by the Constitution Benches in **N.P. Ponnuswami v. Returning Officer, Namakkal Constitutency**, **Durga Shankar Mehta v. Raghuraj Singh**, **Mohinder Singh Gill v. Chief Election Commissioner** (supra) and by three Judges Bench in **Election Commission of India v. Ashok Kumar** (supra).

6) The High Court may entertain petition under Article 226 of the Constitution if the prayer contained in such petition does not have the effect of interpreting or delaying the process of election {**Election Commission of India v. Ashok Kumar** (supra)}.

By applying the above noted propositions to the facts of this case, we hold that the remedy available to the appellant by way of election petition is an effective alternative remedy and the learned Single Judge rightly declined to entertain the writ petition filed by him for quashing the election of respondent No.4 as Sarpanch of Perlipadu Gram Panchayat, Karlapalem Mandal, Guntur District. Consequently, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No. 2107 of 2006 filed by the appellants for early hearing of the appeal is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

27.09.2006
ksld

---

[1] (1999) 4 SCC 526
[2] (2000) 8 SCC 216
[3] 1995 Supp.(2) SCC 305
[4] AIR 1952 SC 64
[5] AIR 1978 SC 851
[6] AIR 1988 SC 61
[7] AIR 1954 SC 520
[8] (2005) 8 SCC 383